

EXHIBIT 6

Costello

UNITED STATE DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RAFAEL FOX, PAUL D'AURIA and
JILL SHWINER,

Plaintiffs,

v. Index No.: 1:19-cv-04650-AJN-SN

STARBUCKS CORPORATION d/b/a
STARBUCKS COFFEE COMPANY,

Defendant.

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KEITH OWEN COSTELLO

New York, New York

Wednesday, August 19, 2020

Reported by: Steven Neil Cohen, RPR

Job No. 315674

1 Costello

2 A. I couldn't recall, I don't know.

3 Q. Do you believe you were already
4 aware of Hot Shots before you became a
5 facilities services manager?

6 A. I don't know.

7 Q. Did you at some point --
8 withdrawn.

9 Were you ever informed that Hot
10 Shot Strips were deployed in any Starbucks
11 stores in the New York region?

12 A. Yes.

13 Q. When did you first learn of that?

14 A. Well, I -- when I was an FSM I had
15 encountered a few found in stores.

16 Q. A few Hot Shots devices found in
17 Starbucks stores in New York?

18 A. Yes.

19 Q. When you say "a few," could you
20 approximate how many such devices you
21 uncovered as a facilities manager?

22 A. I don't know how many devices.
23 When I said "a few" it was just -- I was
24 aware of just a few stores when I was an
25 FSM.

1 Costello

2 Q. Were you aware of it in specific
3 stores or just generally that they were out
4 there in a few stores?

5 A. I can't remember specific stores
6 but when I was in a store visiting the store
7 they were -- I found them.

8 Q. At the time that you first found
9 Hot Shot in a Starbucks store did you
10 already upon seeing it already know what it
11 was?

12 A. Yes.

13 Q. What, if anything, did you do when
14 you first encountered a Hot Shot Strip in a
15 store?

16 A. So my immediate steps were to
17 remove it from the store and then at that
18 point it was a coaching moment with the
19 store manager.

20 Q. Why was your immediate response to
21 remove it?

22 A. Because that device is not
23 something that our pest control companies
24 are allowed to put in the stores. And those
25 devices -- and if there is any pest control

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2 issue in a store the store is to rely on the
3 pest control company to follow that or to
4 service the issue.

5 Q. Why did you interpret it as a
6 failure requiring coaching as to the manager
7 of the store in particular as opposed to any
8 other responsible party?

9 MR. MOY: Objection.

10 THE WITNESS: Can you rephrase
11 the question?

12 BY MR. GRAFF:

13 Q. You had mentioned it was --
14 presented a coaching opportunity for the
15 manager of the store. What information, if
16 any, led you to conclude that the manager of
17 the store was responsible for presence of
18 the Hot Shot Strip?

19 A. Our stores are required to call in
20 any pest activity in stores. That is why we
21 hire pest control companies to service our
22 stores. They are professionally licensed to
23 do that. And those particular pieces of --
24 those No-Pest Strips are not to be used in
25 stores.

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2 Q. Is there a particular store --
3 just to clarify. Are we talking about a
4 specific instance that you can actually
5 recall when you first encountered Hot Shots
6 in a store, threw it out and coached the
7 manager?

8 A. I can't remember a specific store,
9 no.

10 Q. Do you remember the name of any
11 specific manager?

12 A. No, I cannot.

13 Q. When you refer to responding by
14 coaching the manager was that you who
15 conducted the coaching or something else?

16 A. It was myself coaching and just
17 advising that those are not to be used in
18 stores and if they are found they need to be
19 discarded from the store.

20 Q. Over the course of your employment
21 at Starbucks in New York on how many
22 different occasions did you become aware
23 that stores had Hot Shot Strips present in
24 the stores?

25 A. I can't recall.

1 Costello

2 Q. Would you be able to fairly
3 estimate if it was more or less than 100
4 times?

5 MR. MOY: Objection.

6 BY MR. GRAFF:

7 Q. If you can't -- if that would be a
8 total guess then just tell me. I don't want
9 you to take wild guesses.

10 A. Yes, I mean it is a total guess.
11 I couldn't tell you, you know, I couldn't
12 tell you how many.

13 Q. Has the rate at which you have
14 detected or been informed of Hot Shot Strips
15 in stores fluctuated at all over the course
16 of your tenure, that is, was it more common
17 at one point and less common at other
18 points?

19 MR. MOY: Objection.

20 THE WITNESS: Could you rephrase
21 the question?

22 BY MR. GRAFF:

23 Q. Was it your perception that you
24 would at some periods of time encounter Hot
25 Shots with greater frequency than you did at

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2 other periods of time or was it kind of an
3 even pace over the past years?

4 A. I think there was a higher
5 frequency at I guess different points in
6 time.

7 Q. Did you attribute the higher
8 frequency at those points to any particular
9 causes either way?

10 A. No.

11 Q. Were you curious as to why you
12 seemed to find more of them at certain
13 periods of time than at other periods?

14 A. No. My job as a facilities
15 service manager was if I found them to
16 remove them and then advise.

17 Q. To whom would you be advising? Is
18 there a particular position or rank at the
19 company who would be responsible for their
20 following up?

21 A. That would be operations.

22 Q. Has it been your impression that
23 operations has generally been effective at
24 remediating instances of Hot Shots in
25 stores?

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2 MR. MOY: Objection.

3 THE WITNESS: I can't comment on
4 that.

5 BY MR. GRAFF:

6 Q. Did you ever wonder where the Hot
7 Shots are being acquired from?

8 A. No. It never crossed my mind.

9 Q. Did you ever wonder who was paying
10 for them?

11 A. No.

12 Q. Did you ever ask anybody if they
13 knew who was paying for these Hot Shots that
14 you periodically became aware of in stores?

15 MR. MOY: Objection.

16 THE WITNESS: No.

17 BY MR. GRAFF:

18 Q. Did anyone ever tell you any
19 information about the source of the monies
20 that was used to acquire Hot Shots in
21 Starbucks stores?

22 A. No.

23 Q. As you sit here today do you know
24 one way or another whether Starbucks ever
25 paid for the Hot Shots that you found in

1 Costello

2 stores?

3 A. I don't know.

4 Q. As far as you know would there be
5 any policy in effect at Starbucks at any
6 point during your employment that would have
7 prohibited any Starbucks personnel from
8 using company funds to acquire Hot Shots for
9 stores?

10 A. That is not something that is part
11 of my department so I wouldn't be able to
12 comment on that.

13 Q. So you don't have knowledge on
14 whether it is prohibited to use company
15 funds to buy Hot Shots for stores?

16 A. I know that our policy is if there
17 is activity of pests in stores we have
18 licensed service providers, pest control
19 companies, that we contract to come in and
20 deal with that.

21 Q. Do you have an understanding of
22 why it is that Hot Shots are not intended to
23 be used, for example, in Starbucks stores?

24 A. Because we have companies that
25 come in and do that for us so, as I stated,

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2 (Three-page document and picture
3 of Hot Shot No-Pest Strip product
4 information was marked Costello Exhibit 1
5 for identification)

6 BY MR. GRAFF:

7 Q. Please let me know you if you are
8 able to see the pdf document in the chat
9 window that has just come up titled
10 "Costello 1."

11 A. Okay, I see it.

12 Q. Are you able to open that file?

13 A. Yes, I have it open.

14 Q. Can you please, I don't want to
15 rush you, if you could just take a minute to
16 look at the pages and let me know when you
17 have chance to see what it is?

18 MR. MOY: I am sorry. Can
19 you -- I am having problems
20 downloading this document. I guess it
21 is trying save to a place where I have
22 no authorization to save a pdf.

23 Apologies. I got it.

24 BY MR. GRAFF:

25 Q. Mr. Costello, have you had a

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2 those devices are not to be used by our --
3 there is an approved product that the pest
4 control companies can use in stores because
5 they are licensed so by default if there is
6 an approved product and we find something in
7 there that is not part of that approval list
8 then it should not be in there.

9 Q. Hot Shots are not on the approved
10 list even for pest control experts; is that
11 correct?

12 MR. MOY: Objection.

13 THE WITNESS: That is correct.

14 BY MR. GRAFF:

15 Q. Is it your understanding that the
16 unauthorized use of Hot Shots poses a risk
17 to the health and safety of people in
18 Starbucks stores when the Hot Shots are in
19 place?

20 MR. MOY: Objection.

21 THE WITNESS: Yes.

22 MR. GRAFF: I am going try to
23 post an exhibit. The court reporter
24 will later mark it as Costello Exhibit
25 1.

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2 chance in the meantime to take a look at
3 what the document is?

4 A. Did you want me to read
5 everything, all -- all three pages?

6 Q. Not to study every word but just
7 so that you are confident that you see what
8 is there and I am not misdirecting. If you
9 need to look at it more closely in response
10 to any question you can have time to do that
11 too.

12 A. Okay.

13 Q. Do you recognize what is depicted
14 in this exhibit in the three pages?

15 A. Yes, I do.

16 Q. What is it?

17 A. It is a picture of Hot Shot
18 No-Pest Strip product information.

19 MR. MOY: Sorry, to interrupt.

20 I don't see a Bates number. Did
21 you produce this document?

22 MR. GRAFF: I think it is
23 produced as attachments. It is also
24 directly on the web site which is
25 cited in the complaint if you need to

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2 get to the source.

3 MR. MOY: Okay. I just want a
4 clarification --

5 MR. GRAFF: It might have been
6 converted to black and white which is
7 why I am using that color picture
8 instead of that production picture.

9 BY MR. GRAFF:

10 Q. On the second page of the
11 document, Mr. Costello, do you see there is
12 a graphic "Stop, read entire label before
13 use." And below that it says "Directions
14 for use."

15 A. Yes, I see that.

16 Q. The very first sentence in that
17 paragraph states, "It is a violation of
18 federal law to use this product in a manner
19 inconsistent with its labeling."

20 Mr. Costello, as you sit here
21 today do you have any reason to believe that
22 that statement on the label is not correct?

23 MR. MOY: Objection.

24 THE WITNESS: I don't have any
25 working knowledge of the -- of federal

1 Costello

2 law in regards to this.

3 BY MR. GRAFF:

4 Q. Do you see lower down on that page
5 there is that graphics and one of them at
6 the right is a picture with a circle and a
7 red line through it?

8 A. Yes, I see that.

9 Q. The text below that states, "For
10 use in unoccupied areas, not for use in
11 homes except garages, attics, crawl space
12 and sheds occupied by people for less than
13 four hours per day."

14 Do you have any of reason to
15 question whether that is an accurate
16 statement on the label?

17 MR. MOY: Objection.

18 THE WITNESS: No, I don't.

19 BY MR. GRAFF:

20 Q. If you need to take a moment to
21 look at the balance of the document my
22 question will be whether you have any
23 information or reason to believe that any of
24 the statements about the product and its
25 label are not accurate statements of fact?

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2 MR. MOY: Objection.

3 THE WITNESS: Could you rephrase
4 the question again?

5 BY MR. GRAFF:

6 Q. I will withdraw the question and
7 ask it in a different way.

8 As you sit here today do you have
9 any reason to believe that the statements on
10 the Hot Shot label are factually accurate?

11 MR. MOY: Objection.

12 THE WITNESS: No, I do not.

13 BY MR. GRAFF:

14 Q. Has anyone ever told you that the
15 labeling on the Hot Shots is overly alarmist
16 or does not need to be taken literally?

17 A. No.

18 Q. Has anyone ever told you or
19 communicated to you that the manner in which
20 Hot Shots have been used in Starbucks stores
21 during your employment is safe and does not
22 create a risk of harm to people?

23 MR. MOY: Objection.

24 THE WITNESS: No.

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2 BY MR. GRAFF:

3 Q. I will close that document.

4 MR. GRAFF: I am going to be
5 posting another document. This one is
6 labeled Costello Exhibit 2.

7 (One-page document bearing Bates
8 number DEFO1371 was marked Costello Exhibit
9 2 for identification)

10 MR. GRAFF: It is a one-page
11 document bearing Bates number
12 DEFO1371.

13 THE WITNESS: Okay. I have it
14 open.

15 BY MR. GRAFF:

16 Q. If you could take a moment to look
17 at it and let me know when you have had a
18 chance to see what it is?

19 A. Okay.

20 Q. Do you recognize this document as
21 an e-mail chain of which you were copied on
22 some parts?

23 A. Yes, I see it is an e-mail chain.

24 Q. If I could direct your attention
25 first to the last e-mail on this page it has

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2 got the header "On November 22, 2016 at
3 7:24, Carla Ruffin wrote."

4 Do you see that e-mail?

5 A. Yes.

6 Q. Do you believe you received and
7 read this e-mail around the time it was
8 sent?

9 A. I don't recall.

10 Q. The third sentence of the body of
11 that e-mail states, "What are drastic
12 measures we can take to get rid of the
13 problem?"

14 As you sit here today does that
15 refresh your memory, do you have an
16 understanding of whether you thought you
17 knew what Ms. Ruffin was referring to by
18 that language?

19 MR. MOY: Can you point me to
20 that again? Where in the document?

21 Oh, sorry. I see it.

22 BY MR. GRAFF:

23 Q. So my question, Mr. Costello, when
24 she was asking for -- suggested drastic
25 measures to take did you have any

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2 understanding of what she was thinking?

3 A. No, I do not.

4 Q. The next e-mail above this would
5 you agree you recognize it as an e-mail that
6 Rami Kranz sent in response to Carla's
7 e-mail on November 22nd, 2016 at 8:36 a.m.?

8 A. I see that it is an e-mail that
9 Rami sent, yes.

10 Q. Do you know Rami Kranz?

11 A. I do.

12 Q. Do you know him -- strike that.

13 Who do you know him to be?

14 A. Rami is our manager for quality
15 assurance.

16 Q. Do you have any personal
17 relationship with him outside of work?

18 A. No, I do not.

19 Q. Did you speak to Rami Kranz about
20 anything in Carla's e-mail or in his e-mail
21 in response to her?

22 A. I can't recall a conversation
23 about this particular e-mail.

24 Q. Was it your understanding that it
25 was part of Rami Kranz's job to be

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2 responsible for overseeing the permissible
3 use of pesticides in Starbucks stores?

4 A. Can you say the question again?

5 Q. Earlier you had indicated I
6 believe that that is QA's responsibility to
7 deal with misuse of pesticides in stores.

8 My question now is whether Rami
9 Kranz, who has the title manager, quality
10 assurance, is an individual who you believe
11 was responsible for supervising the use of
12 pesticides by employees in Starbucks stores?

13 A. Our quality assurance department
14 approves what product -- what cleaning
15 products can be used in stores. Rami does
16 not oversee what is used for any pesticides
17 in stores.

18 Our policy is for licensed pest
19 control companies to use -- to be dispatched
20 in order to service stores that are having
21 pest activity.

22 Q. We can put aside that document.

23 MR. MOY: Just a heads-up, I
24 think Starbucks legal counsel will be
25 joining us around 12:00 so I would

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2 like to take a break, just to give you
3 a FYI, we might need a break around
4 then.

5 THE WITNESS: Can I request a
6 lunch break at that time, at noon?

7 MR. GRAFF: Yes, that is fine.

8 THE WITNESS: Okay.

9 MR. GRAFF: We will try to
10 finish a minute before noon just so
11 she is not calling in on the record.

12 MR. MOY: Hopefully she will
13 give me a heads-up that I can just
14 alert you in case you are in the
15 middle of a question and answer.

16 BY MR. GRAFF:

17 Q. Mr. Kranz, did you have any
18 communication from either Jill Shwiner or
19 Paul D'Auria about the misuse of pesticides
20 or likely misuse of pesticides in Starbucks
21 stores?

22 A. I am Mr. Costello.

23 Q. I am so sorry.

24 Mr. Costello, did you ever have
25 any communication with Ms. D'Auria or

1 Costello

2 Ms. Shwiner concerning the misuse or alleged
3 misuse of pesticides in Starbucks stores?

4 A. Yes.

5 Q. Is that something you discussed
6 with both of them or was it one or the
7 other?

8 A. I had more conversations with Jill
9 than I did with Paul.

10 Q. Did Jill express to you in spoken
11 words that she believed that there was a
12 problem with the misuse of pesticides in
13 Starbucks stores?

14 A. Our conversations generally were
15 about what was found in stores. Most of it
16 was around Hot Shots or the No-Pest Strips.

17 Q. I am not asking you to try to read
18 Ms. Shwiner's mind but did you have an
19 understanding yourself of why it was that
20 she was addressing that information to you?

21 MR. MOY: Objection.

22 THE WITNESS: No, I don't know.

23 BY MR. GRAFF:

24 Q. Did you have any particular
25 reactions in response on any occasions that

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Costello

you can recall when Ms. Shwiner told you in spoken words about pesticides in Starbucks stores and her belief that there was a problem?

MR. MOY: Objection.

THE WITNESS: Any time it was found. So I would go back to when I would personally find them in stores. The direction was to inform. So if the pest control company found them in stores they were to inform and then remove and dispose of them in the store.

BY MR. GRAFF:

Q. Did you ever personally dispose of any of Hot Shots that you found in stores?

A. No, I did not.

Q. As far as you know are there any special requirements for the safe disposal of Hot Shots versus standard trash?

MR. MOY: Objection.

THE WITNESS: I am not aware of any.

1 Costello

2 BY MR. GRAFF:

3 Q. Did anyone ever tell you that it
4 is unsafe to throw Hot Shot Strips with DDVP
5 into the normal trash?

6 A. No, I never had a conversation
7 with anyone about that.

8 Q. Apart from a direct conversation
9 did you ever hear from anybody that it might
10 be a problem to dispose of Hot Shot Pest
11 Strips in normal trash?

12 A. No.

13 MR. GRAFF: This might be a good
14 point to stop for lunch and for your
15 colleague to join.

16 When would people prefer to
17 reconvene, what time?

18 MR. MOY: I guess it depends in
19 part on how much more you have to go.
20 I assume you are just getting started.
21 Ideally I would like --

22 MR. GRAFF: Off the record.

23 (Discussion off the record)

24 (Luncheon recess: 11:55 p.m.)

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2 performance reviews?

3 A. No, sir, I am not aware.

4 MR. GRAFF: I have just posted a

5 document labeled Exhibit Costello 8.

6 It is a three-page document bearing

7 Bates numbers DEF0154 through DEF0156.

8 (Three-page document bearing Bates

9 numbers DEF0154 through DEF0156 was marked

10 Costello Exhibit 8 for identification)

11 BY MR. GRAFF:

12 Q. If you could take a minute,

13 please, to read through. It is not a very

14 long document and let me know once you have

15 done that.

16 A. Okay.

17 Q. Do you recognize any part of this

18 document as something you have seen before?

19 A. Yes, I do.

20 Q. Is your present memory based on

21 seeing the document at or around the date

22 that appears in these e-mails or is it

23 something that your memory was more recently

24 refreshed on?

25 A. I remember seeing this -- just

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2 seeing this document now refreshed my memory
3 from --

4 Q. Thank you.

5 Towards the bottom third of the
6 second page, that is page DEF155, do you
7 recognize that as an e-mail sent by you on
8 July 12, 2018 at 8:35 a.m. to Tracy Gavin
9 Bridgeman and some other individuals?

10 A. Yes.

11 Q. Did you write the text of this
12 e-mail?

13 A. Yes, I did.

14 Q. Did anyone tell you to write this
15 e-mail?

16 A. No, they did not.

17 Q. The subject line says, "Stores
18 purchasing pest control items:FYI."

19 Why did you select that subject
20 line?

21 A. I am not sure I understand the
22 question.

23 Q. I will ask a different question.

24 Why did you write this e-mail?

25 A. Well, if you read through the

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2 context of here I was advising our regional
3 vice president mainly about an issue where a
4 pest tech from AVP had sent me an e-mail
5 about stores using sprays and other pest
6 control items.

7 Q. Could I ask you please to read the
8 second short paragraph of your e-mail which
9 is the last paragraph of text at the bottom
10 of page 2.

11 A. Starting with "His"?

12 Q. Yes, please.

13 A. "His statement of stores using
14 sprays and other pest control items is what
15 concerns me. We do have times when stores
16 will take matters of pest control in their
17 own hands, ('Hot Shots' in particular). We
18 all know this isn't a Starbucks approved
19 process and quickly address it if we or our
20 supplier finds them."

21 Q. When you refer to "his statement
22 of stores," are you referring to the AVP
23 technician Paul D'Auria or somebody else?

24 A. Yes. Paul D'Auria.

25 Q. Earlier we had been talking about

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2 your duties and I had understood that they
3 don't really extend to pest control issues
4 in stores.

5 I guess the question is why were
6 you concerned when Mr. D'Auria told you
7 something that you already knew?

8 MR. MOY: Objection.

9 THE WITNESS: Can you restate
10 the question please?

11 BY MR. GRAFF:

12 Q. Yes.

13 You wrote, as you read, "His
14 statement of stores using sprays and other
15 pest control items is what concerned me ...
16 We do have times when stores use pest
17 controls in their own hands. Hot Shots in
18 particular.

19 Before Mr. D'Auria made that
20 statement to you were you already aware that
21 there are times when stores take matters of
22 pest control into their own hands as you
23 stated here?

24 A. I was aware in earlier testimony
25 that I had experienced Hot Shots being in

1 Costello

2 stores.

3 Q. Were you concerned when you were
4 aware about it prior to Mr. D'Auria's
5 statement to you?

6 A. Yes, because that is when we would
7 have them removed from the stores.

8 Q. Did you ever circulate an e-mail
9 to district leadership expressing concern
10 about the use of Hot Shots or other
11 pesticides prior to this e-mail?

12 A. Are you asking if I personally
13 did?

14 Q. Yes.

15 A. Yes, prior to this e-mail we have
16 had e-mails sent out just reinforcing that
17 the proper policy is for stores to call in
18 for pest control support and not to use
19 over-the-counter products such as --

20 Q. Have you personally, or did you
21 personally prior to sending this e-mail send
22 e-mails of the nature you just described
23 alerting people not to use unauthorized
24 pesticides?

25 A. Well, as I stated when we found

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2 them -- when I found them it was immediate
3 conversation about this is not policy and
4 disposing of them.

5 And then as the senior FM yes, I
6 have sent an e-mail in the past notifying
7 our OPS leaders, our district managers and
8 our regional directors that these items are
9 not to be used in stores.

10 Q. When did you send the e-mail you
11 are referring to?

12 A. I can't recall.

13 Q. Do you recall the year?

14 A. I am sorry.

15 Q. Do you recall what year you would
16 have sent that e-mail?

17 A. No. I don't remember. Maybe --
18 yes, I can't remember.

19 Q. After whatever point in time it
20 was that you sent the prior e-mail did you
21 again become aware on subsequent occasions
22 that Hot Shots were still being placed in
23 any Starbucks stores?

24 A. Yes.

25 Q. At that point did you do anything?

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2 A. I didn't personally do anything.

3 It is something that is -- that needs to be
4 handled with the operations teams.

5 Q. Up until the date of this e-mail
6 that we are looking at, July 12, 2018, do
7 you believe that the operations teams were
8 addressing the problems appropriately?

9 MR. MOY: Objection.

10 THE WITNESS: I can't say
11 whether they were or weren't
12 addressing them properly.

13 BY MR. GRAFF:

14 Q. What, if anything, did you want
15 Tracy or the recipients of your e-mail to do
16 in response to your e-mail?

17 MR. MOY: Objection.

18 THE WITNESS: If I had wanted
19 them to do something I would have put
20 it in the e-mail. All I was doing was
21 informing them of an event.

22 BY MR. GRAFF:

23 Q. The last sentence on the page, "We
24 all know this isn't a Starbucks approved
25 process and quickly address it."

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2 How is it that you know that the
3 other recipients all know that it is not a
4 Starbucks approved product?

5 A. Would you repeat the question
6 please?

7 Q. I understood that you were aware
8 of that information because it was included
9 in the model contracts for vendors which had
10 an approved list of pesticides.

11 In this e-mail you are suggesting
12 from your words that "we all know this isn't
13 a Starbucks approved process."

14 What is it that led you to believe
15 that the other recipients of your e-mail
16 were also aware that it was not a Starbucks
17 approved product?

18 A. Well, because as I have stated
19 before, our process is for any activity in
20 stores to be called in to our work task
21 system and then from there it is dispatched
22 out to our pest suppliers and that is
23 something that everyone on this e-mail chain
24 knows.

25 Q. How do you know that they know

1 Costello

2 that? Is it something they discussed with
3 you previously? How is it that you believe
4 they knew that information?

5 A. That is the whole point of having
6 a work test system, sir. It is this -- We
7 have a team of suppliers that support --
8 that are professionals that support
9 different facets of how we maintain store
10 condition or equipment so everybody is aware
11 in the company that we have a work task
12 system to dispatch suppliers to address
13 issues in stores.

14 Q. At the end of that last sentence
15 on the bottom of page 2 you stated, "We
16 quickly address it if our supplier finds
17 them." Just to clarify, in what way are you
18 describing it being quickly addressed?

19 A. If you read in previous testimony
20 I have stated how we address. We remove it
21 from the store. We put it in the garbage.

22 Q. At the top of the next page your
23 e-mail continues. Could I ask you please to
24 read the short paragraph at the top of that
25 page?

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2 A. "If he did in fact report us to
3 the NYSDEC (New York State Department of
4 Environmental Conservation) there could be
5 an investigation. I spoke to Joseph DeMetro
6 yesterday regarding this as well. I have
7 attached his e-mail response."

8 Q. Who is Joseph DeMetro?

9 A. Joseph DeMetro was our store
10 development counsel, legal counsel.

11 Q. You approached Mr. DeMetro to
12 discuss the issue?

13 A. Yes, I did.

14 MR. GRAFF: Counsel, just to
15 clarify would you be identifying the
16 substance of that communication as
17 privileged? I don't know
18 Mr. DeMetro's role at the company. It
19 sounded like he is an attorney.

20 MS. RUDERMAN: If you don't mind
21 me injecting. I am sorry. But he was
22 our in-house real estate attorney.

23 BY MR. GRAFF:

24 Q. Mr. Costello, when you consulted
25 with Mr. DeMetro as referenced here you were

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2 doing that in his capacity as an attorney?

3 A. Yes, sir.

4 MR. MOY: I was just going to
5 just give a general instruction to the
6 witness not to disclose the contents
7 of any underlying communications with
8 legal counsel.

9 BY MR. GRAFF:

10 Q. When you wrote that if he, I guess
11 Mr. D'Auria, did in fact report to the
12 NYSDEC there could be an investigation, what
13 did you mean by that?

14 A. Well, at the time I didn't know
15 what the NYSDEC was so I actually had to
16 look it up and find out what it was but
17 basically when I mentioned "investigation"
18 it would just mean that they would
19 investigate a store if they -- if there was
20 any indication of Hot Shots being in stores.

21 Q. In the prior paragraph you had
22 ended off by saying, "We all know this isn't
23 a Starbucks approved process and quickly
24 address it if we or our supplier finds
25 them."

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2 Was it your understanding in the
3 event of a DEC investigation the DEC might
4 conclude that that policy or practice was
5 insufficient?

6 A. I don't understand the question.

7 Q. Sure.

8 You explained that if Starbucks or
9 its suppliers finds Hot Shots quickly
10 address it which you have explained by
11 removing and destroying. Your next
12 paragraph talks about how there could be an
13 investigation by DEC.

14 Did you believe that if DEC
15 investigated and you simply informed them of
16 the substance of your last sentence on the
17 prior page that DEC would view that as
18 satisfactory?

19 MR. MOY: Objection.

20 THE WITNESS: There was no
21 context or -- I don't understand the
22 question still. I am sorry.

23 BY MR. GRAFF:

24 Q. Sure enough.

25 Why were you concerned that there

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2 could be an investigation? What
3 consequences did you fear could come from an
4 investigation if any?

5 A. I don't know what consequences
6 would come from an investigation.

7 Q. Was it your belief at the time
8 that you wrote this e-mail that Starbucks
9 practices as related to Hot Shots was in
10 compliance with any applicable legal
11 requirements?

12 MR. MOY: Objection.

13 THE WITNESS: I can't speak to
14 the over 500 stores that are in the
15 area if we had 100 percent compliance,
16 I don't know.

17 BY MR. GRAFF:

18 Q. Were you concerned that the DEC
19 might impose some sort of penalty on
20 Starbucks if it became aware of the facts
21 that you were aware of concerning the use of
22 DDVP?

23 A. All I was doing in this matter,
24 sir, was to inform our operations team that
25 our -- that managed the stores of what had

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2 happened with Mr. D'Auria's report, if he in
3 fact did the report, and I did not think
4 about consequences or anything like that. I
5 just restated to them that this may happen.
6 If you see this, if you see any
7 investigators in your stores this would be
8 the reason why.

9 Q. Can I ask you please to read the
10 last short paragraph of your e-mail on page
11 DEF156?

12 A. Starting with "I'll"?

13 Q. Yes, please.

14 A. "I will be notifying our pest
15 suppliers to remove any items that aren't
16 approved, bug sprays, Hot Shots and my team
17 is communicating the same message to the DM
18 and ARDIO team so they could help message to
19 the stores as well."

20 Q. Who are the pest suppliers at the
21 time that you would have identified as you
22 stated?

23 A. We have Copesan, C-O-P-E-S-A-N.

24 Q. Were there any other suppliers at
25 the time of this e-mail?

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2 A. Ecolab, E-C-O-L-A-B. Rentokil,
3 R-E-N-T-O-K-I-L, and Quality Assurance.

4 Q. Any others?

5 A. That's it.

6 Q. Prior to receiving Mr. D'Auria's
7 statement or complaint did you believe that
8 those four pest suppliers were already
9 removing Hot Shot DDVP strips if they were
10 encountering them in stores?

11 A. Yes.

12 Q. As far as you know did any vendor
13 whether these or AVP or any other ever
14 itself place Hot Shot No-Pest Strips in
15 Starbucks stores?

16 A. Yes. I am aware of one incident.

17 Q. Which -- what incident are you
18 referring to specifically please?

19 A. Where a supplier was trying to
20 install pest strips in stores.

21 Q. When did that incident happen?

22 A. I can't recall specifically.

23 Q. Who was the supplier?

24 A. Ecolab.

25 Q. Was that an incident with Ecolab

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2 at one location or did it involve multiple
3 store locations?

4 A. One location.

5 Q. How did you become aware that
6 Ecolab was placing or seeking to place
7 No-Pest Strips?

8 A. I was informed by one of my
9 facility service managers.

10 Q. Who specifically?

11 A. I believe it was Kim Healy at the
12 time.

13 Q. What action if any did you take
14 after being informed by Kim Healy that
15 Ecolab was seeking to place No-Pest Strips?

16 A. I had an immediate investigation
17 with Ecolab to understand if that in fact
18 was happening. Found that it was and
19 immediately terminated them. They lost 50
20 stores.

21 Q. What, if any, justification or
22 explanation did Ecolab for its conduct in
23 placing Hot Shot No-Pest Strips?

24 A. I don't recall.

25 Q. As you sit here today to the best

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2 of your knowledge has Starbucks ever
3 terminated any employee in connection with
4 the misuse of any pesticides in Starbucks
5 stores?

6 MR. MOY: Objection.

7 THE WITNESS: I can't speak to
8 that because that is an operations
9 issue. I only deal with facility
10 issues, sir.

11 BY MR. GRAFF:

12 Q. Has anybody ever told you either
13 way whether or not it was your
14 responsibility to have any information
15 concerning any disciplinary action of any
16 type that Starbucks may have taken in
17 response to any of its employees misusing
18 pesticides in stores?

19 MR. MOY: Objection.

20 THE WITNESS: Could you rephrase
21 that, please? That is a very long
22 sentence or question.

23 BY MR. GRAFF:

24 Q. Yes. Maybe we can leave that.
25 Does Starbucks have an employee

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2 handbook or policy manual?

3 A. I believe they do.

4 MR. MOY: Objection.

5 BY MR. GRAFF:

6 Q. As far as you know do you as a
7 facilities manager have the same employee
8 handbook as Starbucks operations division
9 employees do?

10 MR. MOY: Objection.

11 THE WITNESS: I can't speak to
12 whether they are the same or not.

13 BY MR. GRAFF:

14 Q. Does the handbook that you are
15 familiar with, the employee handbook,
16 include any policy against employees
17 deploying pesticides in stores?

18 A. I don't recall.

19 Q. Do you believe there is a written
20 policy for employees that governs the use of
21 or deployment by employees of pesticides in
22 stores?

23 A. Our policy is if there is pest
24 activity in stores, stores are to call in to
25 the work task call center and that is

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2 dispatching a pest control company that has
3 been hired and has professionals to deal
4 with the issue. That is our policy.

5 Q. When you refer to that being "the
6 policy," is it memorialized or described in
7 any written document that you are aware of
8 at the company?

9 A. I am not aware of any.

10 Q. As far as you know how if at all
11 are store employees trained as to the use of
12 pesticides in Starbucks stores?

13 I can reask it.

14 Actually I can withdraw question.

15 I have another exhibit.

16 MR. GRAFF: I have just posted a
17 document called Exhibit Costello 9.

18 It is the Appendix to plaintiffs'
19 complaint.

20 (Appendix to Plaintiffs' Complaint
21 of 14 pages was marked Costello Exhibit 9
22 for identification)

23 BY MR. GRAFF:

24 Q. Mr. Costello, when you have the
25 document in front of you will see it is a